

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

15-cr-632 (JGK)

- against -

ORDER

JOSE HEBERTO ALVAREZ DENIS,

Defendant.

JOHN G. KOELTL, District Judge:

On December 8, 2023, the defendant requested that the Court appoint counsel to determine whether the defendant qualifies for a Guidelines reduction under the recent Amendment 821 to the Federal Sentencing Guidelines, see ECF No. 117, which went into effect on November 1, 2023 and applies retroactively, see Sentencing Guidelines, 88 Fed. Reg. 28,254, 28,270 (effective Nov. 1, 2023); accord U.S.S.G. § 4A1.1(e). The Court appointed counsel pursuant to the Criminal Justice Act, see ECF No. 118, and for the following reasons, finds that the defendant is not entitled to a Guidelines reduction under Amendment 821.

Part A of Amendment 821 to the Guidelines addresses "status points" for offenders and limits the overall criminal history impact of "status points" for defendants that were subject to any criminal justice sentence at the time of the offense. See U.S.S.G. § 4A1.1(e). Part B of Amendment 821 provides a decrease of two levels for defendants who did not receive any criminal

history points under Chapter Four, Part A, and whose offense did not involve aggravating factors specified in the statute. See U.S.S.G. § 4C1.1(a).


In this case, the defendant does not qualify for a reduction under Part A or Part B of Amendment 821. At the time of sentencing, the defendant had three criminal history points and did not commit the offense for which he was sentenced while serving a criminal justice sentence. See PSR ¶¶ 30-34. Accordingly, the defendant does not qualify for a Guidelines reduction under Amendment 821.

Moreover, to the extent the defendant moves for a reduction in sentence pursuant to 18 U.S.C. § 3582(c)(1)(A), that motion is denied without prejudice. The defendant does not explain what extraordinary and compelling circumstances exist to warrant such a reduction. The Court considered the relevant factors at the time of sentencing and varied downward based on mitigating factors. See ECF No. 61, Sentencing Tr. at 20-21. Therefore, the defendant's motion is **denied without prejudice**.

The Clerk is directed to close all pending motions.

SO ORDERED.

Dated: New York, New York
January 19, 2024



John G. Koeltl
United States District Judge